

## **EPA Revised CAFO Rule: Frequently Asked Questions 11/10/2008**

The Michigan Department of Environmental Quality has received numerous questions about what if any effect these new regulations will have on Michigan CAFOs. This document is intended to address these questions.

### **Question: Why did EPA revise their CAFO rules:**

**Response:** On October 31, 2008 the United States Environmental Protection Agency (EPA) signed new and revised final regulations concerning the regulation of discharges from Concentrated Animal Feeding Operations (CAFO). These new and revised regulations amend the 2003 regulations and are in response to a 2005 Federal Court decision (Second Circuit, [\*Waterkeeper Alliance et al. v. EPA\*](#), 399 F.3d 486). These regulations will become effective 14 days after being published in the Federal Register.

### **Question: What is Michigan's position on the revised EPA CAFO rules?**

**Response:** Michigan has been closely following EPA's progress in drafting new regulations and has provided formal and informal comments on the proposed regulations. In summary Michigan and many other states are concerned with EPA's final determination and believe that it is not responsive to the Second Circuit decision and will not be protective of water quality. We also understand that many other groups, including the regulated community have also voiced concerns with the new regulations. We will continue to monitor the situation and believe there is a good chance that further litigation will be pursued.

### **Question: Are CAFOs in Michigan still required to apply for a Discharge permit?**

**Response:** Yes, under state requirements, all CAFOs in Michigan are still required to apply for Discharge permits or demonstrate that they have no potential to discharge to surface waters.

### **Question: Why don't the revised EPA CAFO rules change how CAFOs are regulated in Michigan?**

**Response:** These new and revised regulations control the manner in which EPA must administer its National Pollutant Discharge Elimination (NPDES) Permit program under the Federal Clean Water Act (CWA). Michigan has an independent State statute and regulations for the control and permitting of discharges and potential discharges of pollutants to Michigan's ground and surface waters. This Statute is the Natural Resources and Environmental Protection Act of 1994 (NREPA). In recognition of Michigan's statute, and in accordance with the CWA, the EPA has approved the Michigan permitting program. Based on this approval, EPA does not issue NPDES permits in Michigan. To be approved by EPA, Michigan had to demonstrate that our statutes, regulations, and

programs where as protective of the water resources as the federal program. Michigan received initial approval in October 1973 for regulating CAFOs.

Our initial review of the new regulations is that they will have little if any impact on Michigan CAFOs. Under NREPA and its regulations all CAFOs in Michigan are still required to apply for discharge permits and follow Michigan program requirements. The federal regulations are still under review by the DEQ to determine if there are any impacts to the Michigan program.